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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,550	05/31/2000	Lee Benzinger	NA11P002/00.056.01	5992

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EXAMINER

SNAPP, SANDRA S

ART UNIT PAPER NUMBER

3624

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/586,550

Applicant(s)

BENZINGER ET AL.

Examiner

Sandra Snapp

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-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-20 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Specification

The disclosure is objected to because of the following informalities: the inclusion of Appendices that are not for use with computer program listings. The labeling of numerous sections of the specification as an Appendix (or Annex) do not correspond to the normal uses of that term within 37 C.F.R. 1.96 which provides for the inclusion of a computer program listing in the specification as an "appendix". 37 C.F.R. 1.96 also provides for special publication forms and methods for such listings. No other rule specifically provides for the inclusion of an appendix in the specification. Use of the label "Appendix" for materials other than computer listings causes confusion and leads to erroneous publication processing of the materials. The Examiner suggests integrating the information currently listed as "appendix" into the body of the specification and submitting a substitute specification to overcome this objection. The Examiner acknowledges her previous requirement that the information need only be incorporated by reference and apologizes for any inconvenience this may have caused, however it is necessary that the information be actually incorporated into the body of the specification for it to be printed on the patent. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim language states, "a method for dynamic

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adaptation of a system . . .” which is not associated with any technology. In Ex Parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) (Unpublished) the Board affirmed the rejection under 35 U.S.C. 101 as being directed to nonstatutory subject matter and held the disclosed and claimed invention is directed merely to human making mental computations and manually plotting results on paper charts, and thus is nothing more than an abstract idea which is not tied to any technological art and is not a useful art as contemplated by the Constitution. The Examiner suggests including the computer system, as discussed in the specification, in with claims 1-10 and 21 to overcome this rejection.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are not considered persuasive.

Applicant's arguments, see paper 9, filed 12-23-02, with respect to the rejection(s) of claim(s) 1-20 under 35 U.S.C. 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection for claims 1-10 and 21 is made in view of 35 U.S.C. 101.

Claims 11-20 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art neither discloses or teaches computer code for governing an interaction between components utilizing the criteria set forth in a contract.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Conklin et al. and the Barts et al. patents disclose computer systems that are controlled by various criteria.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


SS

March 6, 2003


VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600